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Ryan C. Reinert (*admitted pro hac vice*)
Attorneys for Manco Florida Associates, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

SEARS HOLDING CORPORATION, *et al.*,¹

Case No. 18-23538 (RDD)

Debtors.

(Jointly Administered)

**OBJECTION OF MANCO FLORIDA ASSOCIATES, LLC TO
SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTIONS**

Manco Florida Associates, LLC (“Landlord”), by and through the undersigned counsel and pursuant to the Order Approving Global Bidding Procedures and Granting Related Relief (the “Global Bidding Procedures Order”) (ECF No. 816) and Section 365(b) of title 11, United States Code (the “Bankruptcy Code”), hereby lodges its initial objection (the “Objection”) to the Debtors’ Cure Costs proposed in the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (ECF No. 1774) (the “Supplemental Notice”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

1. On October 15, 2018 (the “Petition Date”), Sears Holding Corporation and certain affiliates set forth above, including Kmart Corporation (collectively, the “Debtors”), filed their voluntary petitions under Chapter 11 of the Bankruptcy Code.

2. On the Petition Date, Landlord, as landlord and successor in interest to S.S. Kresge Company, and Kmart Corporation (“Debtor-Tenant”), as tenant, were parties to that certain Lease dated as of November 10, 1975 (as amended from time to time, including all subleases relating thereto, the “Lease”). The Lease details the obligations of the parties with respect to the premises generally described as Kmart Store No. 7067 located in Fort Myers, Florida.

3. On January 23, 2019, the Debtors filed the Supplemental Notice indicating the Lease may be assumed and assigned pursuant to the Global Bidding Procedures Order. In addition to incorrectly naming the counterparties to the Lease, the Supplemental Notice inaccurately states a cure amount of \$41,147.72.

4. Section 365(b)(1) of the Bankruptcy Code provides, in relevant part, that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee – (A) cures, or provides adequate assurance that the trustee will promptly cure, such default...” Section 365(d)(3) similarly requires a debtor in possession to “timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” The payment of attorney fees under Section 365(d)(3) is required when the lease at issue provides for such recovery as an obligation of the Debtor. *In re Ames Dept. Stores, Inc.*, 306 B.R. 43, 81 (Bankr. S.D.N.Y. 2004); *citing In re Westview 74th St. Drug Corp.*,

59 B.R. 747, 756-57 (Bankr. S.D.N.Y. 1986) (Because lease provided for recovery of attorneys' fees and interest in an action to enforce the lease, their receipt deserved the same priority under Section 365(d)(3) as any of the Debtor's other obligations that arise post-petition).

5. The Debtor-Tenant is in default under the terms of the Lease for failing to timely pay the sales taxes, real estate taxes and common area maintenance due and owing under the terms of the Lease. The Lease additionally provides for recovery of reasonable attorneys' fees and costs incurred in connection with Debtor-Tenant's failure to comply with certain Lease terms. This Objection therefore seeks to: (a) correct the misnomer of Landlord; (b) provide the accurate cure claim of **\$72,453.19** as of February 1, 2019; and (c) determine entitlement to attorneys' fees and costs incurred in connection with this dispute. A true and correct copy of the Statement of Cure Costs as of February 1, 2019 is attached hereto as Exhibit "A." To assume the Lease, the Debtor-Tenant must cure the above referenced defaults.

6. Landlord joins objections filed by Debtors' other landlords to the Global Bidding Procedures Order and Supplemental Notice to the extent that such objections are not inconsistent with this Objection. Landlord expressly reserves the right to supplement and amend this Objection including, without limitation, to update post-petition amounts due and owing under the Lease and attorneys' fees and costs relating to the enforcement of same.

Dated: January 29, 2019

/s/ Ryan C. Reinert
RYAN C. REINERT
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*Attorneys for Manco Florida Associates,
LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Objection of Manco Florida Associates, LLC to Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transactions has been provided on January 29, 2019 via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties on the attached Service List as indicated.

/s/ Ryan C. Reinert
Attorney

SERVICE LIST

VIA EMAIL

I. Bid Notice Parties

a. Debtors

Rob Riecker: rob.riecker@searshc.com

Luke Valentino: luke.valentino@searshc.com

Mohsin Meghji: mmeghji@miiipartners.com

b. Debtors' counsel

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Jacqueline Marcus, Esq.: jacqueline.marcus@weil.com

Garrett A. Fail, Esq.: garrett.fail@weil.com

Sunny Singh, Esq.: sunny.singh@weil.com

c. Debtors' investment banker:

Brandon Aebersold and Levi Quaintance: project.blue.rx@lazard.com

II. Buyer Parties

a. Buyer

Kunal S. Kamalani: kunal@eslinvest.com

Harold Talisman: harold@eslinvest.com

b. Counsel

Christopher E. Austin, Esq.: caustin@cgsh.com

Benet J. O'Reilly, Esq.: boreilly@cgsh.com

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III. Consultation Parties

a. Bank of America

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George Howard, Esq.: George.Howard@skadden.com

b. Wells Fargo Bank

Kevin J. Simard, Esq.: ksimard@choate.com

Jonathan D. Marshall, Esq.: jmarshall@choate.com

c. Committee

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VIA FIRST CLASS MAIL

Transform Holdco, LLC
c/o ESL Partners, Inc.
Attention: Kunal S. Kamlani and Harold Talisman
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154

Sears Holdings Corporation
Attn: General Counsel
3333 Beverly Road
Hoffman Estates, IL 60179

Weil, Gotshal & Manges LLP
Attention: Ray C. Schrock, P.C., Ellen J. Odoner, Gavin Westerman and Sunny Singh
767 Fifth Avenue
New York, New York 10153

Cleary Gottlieb Steen & Hamilton LLP
Attention: Christopher E. Austin, Benet J. O'Reilly and Sean A. O'Neal
One Liberty Plaza
New York, NY 10006

Manco Florida Associates, LLC**Statement**

c/o Mandelbaum & Mandelbaum
 80 Main Street, Suite 510
 West Orange, NJ 07052
 973-325-0011

Account: 3833clev-t0000092

Date: 01/24/19

Payment: \$ _____

Make checks payable to: Manco Florida Associates, LLC

KMart Corporation, Store #7067

Sears Holding Corporation
3333 Beverly Road, Loc BC-131A
Hoffman Estates, IL 60179

Date	Description	Charges	Prior Paid	Balance
08/27/18	July 2018 CAM	804.04		804.04
08/27/18	July 2018 CAM-taxable	1,653.69		2,457.73
08/27/18	5.8% Sales Tax 7/18	95.91		2,553.64
09/24/18	Aug 2018 CAM	802.32		3,355.96
09/24/18	Aug 2018 CAM-taxable	1,227.62		4,583.58
09/24/18	5.8% Sales Tax 8/18	71.20		4,654.78
09/30/18	Sept'18 CAM (Pre-petition)	851.88		5,506.66
09/30/18	Sept'18 CAM-tx (Pre-petition)	10,877.26		16,383.92
09/30/18	5.8% Sales Tax 9/18 (Pre-petition)	630.88		17,014.80
10/14/18	R/E Tax 1/1-10/14 (Pre-petition)	37,207.21		54,222.01
10/14/18	5.8% Sales Tax RET (Pre-petition)	2,158.02		56,380.03
10/14/18	Oct 1-14 CAM (Pre-petition)	438.63		56,818.66
10/14/18	Oct 1-14 CAM-tx (Pre-petition)	493.15		57,311.81
10/14/18	5.8% Sales Tax 10/18 (Pre-petition)	28.60		57,340.41
10/14/18	10/5-10/14 CAM (Pre-petition)	24.77		57,365.18
10/14/18	Add'l '18 CAM-tx (Pre-petition)	1,668.30		59,033.48
10/14/18	5.8% Sales Tax (Pre-petition)	96.76		59,130.24
12/18/18	Nov'18 CAM Post-petition	816.49		59,946.73
12/18/18	Nov'18 CAM-tx Post-petition	1,896.46		61,843.19
12/18/18	5.8% Sales Tx 11/18 Post-petition	110.00		61,953.19
02/01/19	Base Rent (02/2019)	10,500.00		72,453.19

Current	30 Days	60 Days	90 Days	Amount Due
10,500.00	2,822.95	0.00	59,130.24	72,453.19

This notice is being forwarded to you as a courtesy and should not delay your obligation to forward all rent payments in accordance with the terms and conditions of your Lease Agreement.